

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:06-HC-2219-D

| | | |
|--------------------------|---|---------------------------|
| UNITED STATES OF AMERICA |) | |
| |) | RENEWED MOTION TO DISMISS |
| v. |) | AND RELEASE |
| |) | |
| CHRISTOPHER MOORE |) | |

The Respondent in the above-captioned case, by and through undersigned counsel, moves this Honorable Court for an order dismissing the pending 18 U.S.C. § 4248 proceeding.

1. In 2006, the United States certified Graydon Comstock and four other Respondents for civil commitment to pursuant to provisions of the Adam Walsh Act, 18 U.S.C. § 4248. *See United States V. Comstock (No. 5:06-HC-2195-BR), United States v. Catron (No 5:06-HC-2202-BR), United States v. Matherly (No. 5:06-HC-2205-BR), United States v. Revland (No.5:06-HC-2212-BR), United States v. Vigil (No. 5:06-HC-2206-BR)*. These five respondents moved to dismiss on several grounds, and proceedings were consolidated.

On September 7, 2007, this Court granted respondents' motion to dismiss on two Constitutional grounds. First, this Court held that Congress lacked constitutional authority to enact 18 U.S.C. § 4248. Second, this Court held that the commitment procedures violate due process. This Court rejected respondent's arguments that §4248 commitment constituted criminal and not civil proceedings and did not address

respondents' additional contention that the statute violates constitutional guarantees of equal protection.

The government appealed the district court's order, challenging both constitutional grounds cited by the district court. Respondents' brief raised the equal protection argument not reached by the district court, and the government addressed that argument in its reply brief. The Fourth Circuit affirmed the district court's order on the ground that Congress lacked the constitutional authority to enact 18 U.S.C. § 4248. The Fourth Circuit did not reach the other issues raised in the appeal.

The United States Supreme Court granted certiorari and, on May 17, 2010, the Supreme Court reversed the Fourth Circuit's opinion and remanded the case to the Fourth Circuit. The Supreme Court opinion stated, " We do not reach or decide any claim that the statute or its application denies equal protection of the laws, procedural or substantive due process, or any other rights guaranteed by the Constitution. Respondents are free to pursue those claims on remand, and any others they have preserved."

On June 8, 2010, the Fourth Circuit issued an order granting the parties' joint motion for expedited review. The order directed the parties to address, in addition to other preserved claims, the following issue: " Whether 18 U.S.C. § 4248 (2006) or its application denies equal protection of the laws, procedural or substantive due process, or any other rights guaranteed by the Constitution."

2. The above captioned case raises identical legal issues to *United States v. Comstock*, No. 5:06-HC-02195-BR. Respondent incorporates by reference the arguments made in Mr. Comstock's February 15, 2007 (D.E.12) and March 30, 2007 (D.E.19) motions to

dismiss and notes this Court's September 7, 2007 (D.E.32) order granting those motions.

Respondent respectfully requests that this Court dismiss the action against him and order that the Respondent be immediately released. Undersigned counsel has contacted counsel for the government who opposes the relief sought in this motion.

3. At this time, Respondent does not request a hearing on the merits of his case. In the event this Court conducts hearings under 18 U.S.C. § 4248, Respondent respectfully that, to the extent possible, this Court reserve his place in certification order if and when a hearing on the merits is calendered.
4. Undersigned counsel respectfully requests that this Court deem this motion to be timely filed; and shows unto the Court that counsel had difficulty arranging visitation with the Respondent until September 2, 2010.

Respectfully submitted, this 9th day of September, 2010.

/s/ Steven E. Hight

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was served
this date by filing electronically by means of the CM/ECF system presently in operation
by this Court, which CM/ECF system will automatically notify the following:

Edward D. Gray
Civil Division
Assistant U.S. Attorney
310 New Bern Avenue suite 800
Raleigh, North Carolina 27601

This the 9th day of September, 2010.

/s/ Steven E. Hight

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